

J. Y. Interpretation No.706 (December 21, 2012) *

【Offset of input tax in cases where a business entity buys
court-auctioned goods】

ISSUE: Is it unconstitutional where the input certificate shall be limited to the third copy (deduction copy) of a business tax payment slip as issued by the tax collection authority, which is not a seller business entity, in the case of buying court-auctioned goods ?

RELEVANT LAWS:

Article 19 of the Constitution (憲法第十九條) ; J.Y. Interpretation: Nos. 622, 640, 674, 692, 703 (司法院釋字第六二二號、第六四〇號、第六七四號、第六九二號、第七〇三號解釋) ; Article 1, Article 10, Paragraph 1 of Article 15, Paragraphs 1-3 of Article 32, Article 33 of Value-added and Non-value-added Business Tax Act (加值型及非加值型營業稅法第一條、第十條、第十五條第一項、第三十二條第一項至第三項、第三十三條) ; Article 38, Paragraph 1, Item 11 as amended and promulgated on June 22, 2011 and the current one of Enforcement Rules of the Value-added and Non-value-added Business Tax Act (加值型及非加值型營業稅法施行細則第三十八條第一項第十一款、現行該條款 (中華民國一〇〇年六月二十二日修正發布)) ; Articles 1, 3,

* Translated by Chun-Yih Cheng.

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60,73 and 113 of Compulsory Execution Act (強制執行法第一條、第三條、第六十條、第七十三條、第一百十三條) ; Item 1, Sub-item 6, Item 4 of Point 3 of Enforcement Notes for Business Tax Act as amended and promulgated on June 28, 1988 (七十七年六月二十八日修正發布之修正營業稅法實施注意事項第三點第一項、第四項第六款) ; Ministry of Finance Letter: 1996.10.30 Tai-Tsai-Shuei No. 851921699 (財政部八十五年十月三十日台財稅第八五一九二一六九九號函) ; Points 2,4 of Handling Notes for Levying Business Tax for Court-, Administrative Execution Agency- or Customs-auctioned or -sold Goods (法院行政執行機關及海關拍賣或變賣貨物課徵營業稅作業要點第二點、第四點) ; Usage Rules for Government Unified Invoices: paragraph 22, Article 4 (統一發票使用辦法第四條第二十二款) .

KEYWORDS:

principle of statutory taxpaying (租稅法律主義), value-added business tax (加值型營業稅), receipt other than government unified invoice (非統一發票之收據), business tax payment slip for court-auctioned or -sold goods (法院拍賣或變賣貨物營業稅繳款書), input certificate (進項憑證), offsetting output tax (扣抵銷項稅額).**

HOLDING: The provisions of Sub-item 6, Item 4, Point 3 of the Enforcement Notes for the Business Tax Act as amended and promulgated by the Ministry of Finance on June 28, 1988 (abolished on August 11, 2011) that “when a business entity reports and pays business tax based on the input certificate bearing the amount of the business tax to offset output tax, in addition to those provided for in Article 38 of the Enforcement Rules of this Act, acceptable certificates include: 6. ... court-auctioned goods ... the third copy (deduction copy) of a business tax payment slip as issued by the tax collection authority (relisted in Item 11, Paragraph 1, Article 38 of the Enforcement Rules of the Value-added and Non-value-added Business Tax Act as amended and promulgated on June 22, 2011: “... court-auctioned or -sold goods ...the deduction copy of a business tax payment slip as issued by the tax collection authority.” The said Item was amended and promulgated on March 6, 2011, but the above provision remains the same), and the Ministry of Finance Letter 1996.10.30 Tai-Tsai-Shuei No. 851921699: “... 2.

解釋文：財政部中華民國七十七年六月二十八日修正發布之修正營業稅法實施注意事項（一〇〇年八月十一日廢止）第三點第四項第六款：「營業人報繳營業稅，以載有營業稅額之進項憑證扣抵銷項稅額者，除本法施行細則第三十八條所規定者外，包括左列憑證：六、……法院……拍賣貨物，由稽徵機關填發之營業稅繳款書第三聯（扣抵聯）。」（改列於一〇〇年六月二十二日修正發布之加值型及非加值型營業稅法施行細則第三十八條第一項第十一款：「……法院……拍賣或變賣貨物，由稽徵機關填發之營業稅繳款書扣抵聯。」一〇一年三月六日再度修正發布該條款，此部分相同）及八十五年十月三十日台財稅第八五一九二一六九九號函：「……二、法院拍賣或變賣之貨物屬應課徵營業稅者，稽徵機關應於取得法院分配之營業稅款後，就所分配稅款填發『法院拍賣或變賣貨物營業稅繳款書』，……如買受人屬依營業稅法第四章第一節計算稅額之營業人，其扣抵聯應送交買受人作為進項憑證，據以申報扣抵銷項稅額。三、至未獲分配之營業稅款，……如已徵起者，對買受人屬依營業稅法第四章第一節計算稅額之營業人，應通知其就所徵起之稅額專案申

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For court-auctioned or -sold goods that are subject to business tax, the tax collection authority shall, after receiving the amount of court-distributed tax, issue a “court-auctioned or -sold goods business tax payment slip” for the same amount ... if the buyer is a business entity which should calculate the amount of tax in accordance with Section 1, Chapter 4 of the Business Tax Act, the deduction slip shall be delivered to the buyer as an input certificate to report and offset output tax. 3. As regards the amount of undistributed business tax ... if it has been paid and the buyer is a business entity which should calculate the amount of tax in accordance with Section 1, Chapter 4 of the Business Tax Act, the tax collection authority shall notify the buyer to apply on a special case basis to offset the amount paid against the output tax”, are in breach of the Principle of Statutory Taxpaying as enshrined in Article 19 of the Constitution, and shall not be applied.

REASONING: Article 19 of the Constitution provides that the people shall have the duty of paying taxes in accord-

報扣抵銷項稅額。」部分，均違反憲法第十九條租稅法律主義，應不予援用。

解釋理由書：憲法第十九條規定，人民有依法律納稅之義務，係指國家課人民以繳納稅捐之義務或給予人民

ance with law. This means that when the State imposes a tax or provides a preferential tax deduction or exemption treatment for its people, this must be based on laws or regulations clearly authorized by law, prescribing the constituent conditions of the tax such as the subject, subject matter, tax base, tax rates, methods of payment and period of payment. The interpretation of relevant laws by the competent authority within its competence shall abide by the principles of the Constitution and the meaning and purpose of the relevant laws, and comply with the general rules of legal interpretation. Any interpretation that exceeds the bounds of legal interpretation of law and that creates tax duties not provided for under the law is not permitted by the Principle of Statutory Taxpaying under Article 19 of the Constitution (see J.Y. Interpretation Nos. 622, 640, 674, 692 and 703).

When a business entity which is subject to value-added business tax in the territory of the Republic of China sells taxable goods, it shall include the amount of the business tax in the price of

減免稅捐之優惠時，應就租稅主體、租稅客體、稅基、稅率、納稅方法及納稅期間等租稅構成要件，以法律或法律明確授權之命令定之；主管機關本於法定職權就相關法律所為之闡釋，自應秉持憲法原則及相關法律之立法意旨，遵守一般法律解釋方法而為之；如逾越法律解釋之範圍，而增加法律所無之租稅義務，則非憲法第十九條規定之租稅法律主義所許（本院釋字第六二二號、第六四〇號、第六七四號、第六九二號、第七〇三號解釋參照）。

凡在中華民國境內適用加值型營業稅之營業人銷售應稅貨物，應將營業稅額內含於貨物之定價（原規定於中華民國七十七年六月二十八日修正發布之修正營業稅法實施注意事項《一〇〇年

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the goods (originally set forth in Item 1, Point 3 of the Enforcement Notes for the Amended Business Tax Act as amended and promulgated on June 28, 1988 (abolished on August 11, 2011); later incorporated into Paragraph 2, Article 32 of the Value-added and Non-value-added Business Tax Act (hereafter, Business Tax Act) on January 26, 2011) and, pursuant to the “Schedule for Business Entities Issuing Sales Certificates” and upon receipt of payment or dispatch of goods, shall issue and deliver government unified invoices identifying the name, address and unified business number of the buyer business entity and the amount of the business tax or other certificate bearing the amount of business tax as approved by the Ministry of Finance (see Article 1, Paragraphs 1 and 3, Article 32, Items 1 and 3, Article 33, Business Tax Act). When paying the price to the seller business entity, the buyer business entity pays the business tax as transferred from paying the goods, and shall, based on the certificate, be entitled to exercise the right to offset the amount of input tax against the amount of output tax, and is obliged to report and pay only

八月十一日廢止》第三點第一項，嗣於一〇〇年一月二十六日另增訂於加值型及非加值型營業稅法《下稱營業稅法》第三十二條第二項），並依「營業人開立銷售憑證時限表」規定，於收款或發貨時開立、交付載明買方營業人名稱、地址、統一編號及營業稅額之統一發票或其他經財政部核定載有營業稅額之憑證（營業稅法第一條、第三十二條第一項、第三項、第三十三條第一款、第三款參照）。買方營業人於交付價金予賣方營業人時，因已支付買受該特定貨物而依法受轉嫁之營業稅，自得據該憑證行使進項稅額扣抵權，由當期銷項稅額中扣減，僅就其餘額負申報繳納營業稅之義務，不以開立憑證之賣方營業人已依限申報繳納營業稅款為要件（營業稅法第十五條第一項參照）。又營業稅法第三十三條第三款規定：「其他經財政部核定載有營業稅額之憑證。」乃為因應需要，授權財政部對於賣方營業人依法開立之同條前二款統一發票以外之憑證為核定。

the balance. This is not conditional upon the seller business entity reporting and paying the business tax in time (see Paragraph 1, Article 15, Business Tax Act). In addition, the provision of Item 3, Article 33 of the Business Tax Act: “other certificates bearing the amount of the business tax as approved by the Ministry of Finance” authorizes the Ministry of Finance to approve certificates other than government unified invoices issued in accordance with the preceding two Items of the same Article by the seller business entity to meet practical needs.

An auction or sale under the Compulsory Execution Act is made by the Execution Court as seller, on behalf of the debtor, to transfer, through a compulsory execution procedure, the title of the auctioned or sold goods and collect payment for the price. If the seller is a business entity subject to value-added business tax and auctions or sells taxable goods, the auctioned or sold price shall also include business tax (see Point 4 of Handling Notes for Levying Business Tax for Court-, Administrative Execution

強制執行法上之拍賣或變賣，係由執行法院代債務人立於出賣人之地位，經由強制執行程序，為移轉拍賣或變賣物所有權以收取價金之行為。出賣人如係適用加值型營業稅之營業人，而拍賣或變賣應稅貨物者，其拍定或承受價額亦內含營業稅（法院行政執行機關及海關拍賣或變賣貨物課徵貨物營業稅作業要點第四點參照）。民事強制執行事件係由地方法院民事執行處之法官或司法事務官命書記官督同執達員辦理，並由書記官於拍賣或變賣程序終結後，作成經執行拍賣人簽名之載明拍賣或變

Agency- or Customs-auctioned or -sold Goods). Civil compulsory execution matters are handled by court clerks together with enforcement assistants as ordered by judges or judicial administration clerks of the District Court Civil Execution Department. When the auction or sale procedure is closed, the court clerk shall make a record signed by the auctioneer, indicating the type and quantity of the auctioned or sold goods, the names and addresses of the creditor, debtor, and buyer, and the highest bidding price (see Articles 1, 3, 60, 73, 113 of Compulsory Execution Act). The auction or sale procedure administered by the Execution Court in accordance with the law is rigorous. There is public faith in the receipt of non-government unified invoices. The business tax included in the auctioned or sold price may be ascertained in accordance with the statutory formula. Relevant information may be verified by the above court record (see Article 10, Business Tax Act, Points 2 and 4, Handling Notes for Levying Business Tax for Court-, Administrative Execution Agency- or Customs-auctioned or -sold Goods; Item 22, Article 4, Usage

賣物種類、數量、債權人、債務人、買受人之姓名、住址及其應買之最高價額之筆錄（強制執行法第一條、第三條、第六十條、第七十三條、第一百十三條參照）。執行法院依法進行之拍賣或變賣程序嚴謹，填發之非統一發票之收據有其公信力，拍定或承受價額內含之營業稅額可依法定公式計算而確定，相關資料亦可以上開法院筆錄為證（營業稅法第十條、法院行政執行機關及海關拍賣或變賣貨物課徵貨物營業稅作業要點第二點、第四點、統一發票使用辦法第四條第二十二款參照）。故執行法院於受領拍定或承受價額時開立予買方營業人之收據，亦相當於賣方營業人開立之憑證。

Rules for Government Unified Invoices). Therefore, the receipt issued by the Execution Court to the buyer upon receipt of the auctioned or sold price amounts to a certificate issued by a seller business entity.

Sub-item 6, Item 4, Point 3 of the amended Enforcement Notes for the Business Tax Act: “when the business entity reports and pays the business tax based on the input certificate bearing the amount of business tax to offset output tax, in addition to those certificates provided for in Article 38 of the Enforcement Rules of this Act, such certificates include: 6. ... court-auctioned goods ... the third copy (deduction copy) of the business tax payment slip as issued by the tax collection authority (relisted in Item 11, Paragraph 1, Article 38 of the Enforcement Rules of the Value-added and Non-value-added Business Tax Act as amended and promulgated on June 22, 2011: “... court-auctioned or -sold goods ...the deduction copy of a business tax payment slip as issued by the tax collection authority.” The said Item was amended and prom-

修正營業稅法實施注意事項第三點第四項第六款：「營業人報繳營業稅，以載有營業稅額之進項憑證扣抵銷項稅額者，除本法施行細則第三十八條所規定者外，包括左列憑證：六、……法院……拍賣貨物，由稽徵機關填發之營業稅繳款書第三聯（扣抵聯）。」（改列於一〇〇年六月二十二日修正發布之營業稅法施行細則第三十八條第一項第十一款：「……法院……拍賣或變賣貨物，由稽徵機關填發之營業稅繳款書扣抵聯。」一〇一年三月六日再度修正發布該條款，此部分相同。下稱系爭規定）及八十五年十月三十日台財稅第八五一九二一六九九號函：「……二、法院拍賣或變賣之貨物屬應課徵營業稅者，稽徵機關應於取得法院分配之營業稅款後，就所分配稅款填發『法院拍賣或變賣貨物營業稅繳款書』，……如買受人屬依營業稅法第四章第一節計算稅額之營業人，其扣抵聯應送交買受人作

ulgated on March 6, 2011, but the above provision remains the same; hereafter the “Provisions”), and the Letter 1996.10.30 Tai-Tsai-Shuei No. 851921699: “... 2. For court-auctioned or –sold goods that are subject to business tax, the tax collection authority shall, after receiving the amount of court-distributed tax, issue a “court-auctioned or-sold goods business tax payment slip” for the same amount ... if the buyer is a business entity which should calculate the amount of tax in accordance with Section 1, Chapter 4 of the Business Tax Act, the deduction slip shall be delivered to the buyer as an input certificate to report and offset the output tax. 3. As regards the amount of undistributed business tax ... if it has been paid and the buyer is a business entity which should calculate the amount of tax in accordance with Section 1, Chapter 4 of the Business Tax Act, the tax collection authority shall notify the buyer to apply on a special case basis to offset the amount paid against the output tax” expressly providing that the business entity buying court-auctioned or-sold goods shall use the third copy (deduction copy) of the business payment

為進項憑證，據以申報扣抵銷項稅額。三、至未獲分配之營業稅款，……如已徵起者，對買受人屬依營業稅法第四章第一節計算稅額之營業人，應通知其就所徵起之稅額專案申報扣抵銷項稅額。」明定法院拍賣或變賣應稅貨物之買方營業人須以非賣方營業人之稽徵機關所填發之營業稅繳款書第三聯（扣抵聯）作為進項稅額憑證，又附加以營業稅款之收取或徵起為稽徵機關填發營業稅繳款書之要件，排除執行法院所出具已載明或另以拍賣筆錄等文書為附件標示拍賣或變賣物種類與其拍定或承受價額之收據，得作為進項稅額之憑證，牴觸營業稅法第三十二條第一項賣方營業人應於收取價金時就營業稅之全額開立憑證，及第三十三條第三款財政部係對賣方營業人開立憑證為核定，而非命以稽徵機關開立之憑證為限之規定，使買方營業人不能依營業稅法第十五條第一項規定將其於該拍定或承受價額中受轉嫁之進項稅額，扣減其當期之銷項稅額，影響其於當期應納營業稅額，而增加法律所無之租稅義務，與租稅法律主義不符，均應不予援用。

slip as issued by the tax collection authority, which is not a seller business entity, as the input tax certificate. Furthermore, it is a condition precedent on the tax collection authority's issuing the business tax payment slip that the amount of business tax should have been collected or paid, excluding the eligibility of the receipt issued by the court, which indicates the type and price of the auctioned or sold goods or to which the court record that indicates the type and price of the auctioned or sold goods has been attached, as an input tax certificate. These rules contradict Paragraph 1, Article 32 of the Business Tax Act that a seller business entity shall issue a certificate for the full amount of business tax upon receipt of payment, and Item 3, Article 33 that the Ministry of Finance will approve the certificate issued by a seller business entity, and that the certificate shall not be limited to the one issued by a tax collection authority. They have prevented the buyer business entity from offsetting the input tax which is transferred through the auctioned or sold price against the current output tax in accordance with Paragraph 1, Article 15

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of the Business Tax Act, thereby affecting the amount of business tax currently payable. They create tax payment obligations without a statutory ground, and are incompatible with the Principle of Statutory Taxpaying, and thus should not be applied.

Based on the meaning and purpose of this Interpretation, the relevant authorities shall have discussions as soon as possible, and the Ministry of Finance shall, in accordance with Item 3, Article 33 of the Business Tax Act, approve the eligibility of court-issued receipts, which indicate the type and price of the auctioned or sold goods or to which the court record indicating the type and price of the auctioned or sold goods has been attached, as the input tax certificate of the buyer business entity.

Justice Yeong-Chin Su filed concurring opinion.

Justice Mao-Zong Huang filed concurring opinion.

Justice Pai-Hsiu Yeh filed concurring opinion.

相關機關應依本解釋意旨儘速協商，並由財政部就執行法院出具已載明或另以拍賣筆錄等文書為附件標示拍賣或變賣物種類與其拍定或承受價額之收據，依營業稅法第三十三條第三款予以核定，作為買方營業人進項稅額之憑證。

本號解釋蘇大法官永欽提出協同意見書；黃大法官茂榮提出協同意見書；葉大法官百修提出協同意見書；羅大法官昌發提出協同意見書；湯大法官德宗提出協同意見書；林大法官錫堯提出部分不同意見書。

Justice Chang-Fa Lo filed concurring opinion.

Justice Dennis Te-Chung Tang filed concurring opinion.

Justice Si-Yao Lin filed dissenting opinion in part.

EDITOR'S NOTE:

Summary of facts: The applicants, A Leasing Co. and two other companies, were buyers at certain court-auctioned proceedings. When reporting business tax, they submitted the receipt of civil compulsory execution issued by the court to offset business tax. The relevant tax collection authorities refused to accept their offsets on the basis of Sub-item 6, Item 4, Point 3 of the Enforcement Notes for the Business Tax Act as amended and promulgated by the Ministry of Finance in 1988, and the Ministry of Finance Letter 1996 Tai-Tsai-Shuei No. 851921699 that in a court-auctioned or-sold procedure, only after the tax collection authority has actually collected the business tax amount can the buyer business entity report and offset the input tax with the third copy (deduction copy) of the business tax payment

編者註：

事實摘要：聲請人A租賃公司等3公司為法院拍賣程序之承受人或拍定人，為申報營業稅，分別檢附法院民事強制執行案款收據，申報扣抵營業稅。事經各國稅局主管機關援引財政部77年發布之修正營業稅法注意事項第3點第4項第6款及85年之台財稅第851921699號行政令函，關於法院之拍賣變賣程序，應於稽徵機關徵得營業稅款後，買受人依稽徵機關所填發之營業稅繳款書第三聯（扣抵聯），始得申報扣抵銷項稅額之規定，以尚未向被拍賣物原所有人徵起營業稅款為由，否准其申報扣抵。聲請人不服，於行政爭訟敗訴後，認上開規定已增加法律所無之限制，違背租稅法律主義而違憲，分別聲請解釋。大法官先後受理後，以各聲請人主張違憲之標的相同，乃予合併審理。

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slip as issued by the tax collection authority. The applicants appealed but failed in the administrative dispute proceedings. They believe the above provisions created restrictions that the law does not have, violated the Principle of Statutory Taxpaying and were unconstitutional; therefore, they applied for an interpretation. The Grand Justices accepted the cases respectively, and consolidated the applications because the unconstitutional issues raised by the applicants were the same.